

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**J.C. PENNEY LIFE INS. CO.,**

**Appellant,**

**v.**

**TRANSIT CASUALTY COMPANY IN RECEIVERSHIP,**

**Respondent.**

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**DOCKET NUMBER WD69819**

**Date: September 29, 2009**

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Appeal from:  
Cole County Circuit Court  
The Honorable Richard G. Callahan, Judge

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Appellate Judges:  
Division One: Alok Ahuja, Presiding Judge, James M. Smart and Lisa White  
Hardwick, Judges

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Attorneys:  
James K. Lowry, Esq., Jefferson City, MO, for appellant.  
James C. Owen, Esq., Chesterfield, MO, for respondent.

# **MISSOURI APPELLATE COURT OPINION SUMMARY**

## **COURT OF APPEALS -- WESTERN DISTRICT**

**J.C. PENNEY LIFE INS. CO.**

**Appellant,**

**v.**

**TRANSIT CASUALTY COMPANY IN RECEIVERSHIP,**

**Respondent.**

**WD69819**

**COLE COUNTY**

Before Division One Judges: Alok Ahuja, Presiding Judge, James M. Smart and Lisa White Hardwick, Judges

This case arises from a proof of claim filed by J.C. Penney Life Insurance Company ("Penney") against the receivership for Transit Casualty Company ("Transit") pursuant to a "Reinsurance Agreement." The circuit court entered a judgment finding that the agreement between Penney's predecessor in interest, Beneficial Fire & Casualty Company and Transit is a reinsurance agreement and not a contract of insurance. Based upon this finding, the circuit court determined that Penney's claims against the Transit receivership are Class 5 general creditor claims pursuant to Section 375.700.1(5), RSMo 2000. Penney appeals the judgment, contending that its claims arise from a contract of insurance and, therefore, should be prioritized as Class 3 policy claims under Section 375.700.1(3).

**AFFIRMED.**

**Division One holds:** Based on the plain language of the Reinsurance Agreement, the circuit court correctly concluded that it is a contract for reinsurance and not an insurance contract. Penney's proof of claim derives from the Reinsurance Agreement and, therefore, it is a reinsurance claim. The court properly assigned the reinsurance claim as a Class 5 priority pursuant to Section 375.700.1(5). The judgment is affirmed.

**Opinion by: Lisa White Hardwick, Judge**

September 29, 2009

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